

Remarks

In view of the foregoing amendments and the following remarks, Applicants request favorable reconsideration and withdrawal of the rejections set forth in the Office Action dated May 30, 2008.

Claims 1-11, 27, and 29 are pending, of which Claims 1 and 29 are independent. Claims 1, 8, and 29 are amended herein. Support for the amendments can be found in the original disclosure. Therefore, no new matter has been added.

35 U.S.C. § 103(a) Rejection

Claims 1- 4, 7, 8, 11, and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,342,057 (Brace et al. '057) in view of Oxland et al. Claims 1-4, 7-11 and 29 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,379,364 (Brace et al. '364) in view of Brace et al. '057 and Oxland et al. These rejections are respectfully traversed.

Discussion

Initially, Applicants would like to thank the Examiner for extending the courtesy of conducting a telephone interview with Applicants' attorney to discuss the outstanding rejections. During that telephone conference, Applicants' attorney discussed the applied references, including Brace et al. '057 in particular. The Examiner has relied on Brace et al. '057 as suggesting an offset portion on a drill guide, as was recited in independent Claims 1 and 29. In particular, the Office Actions have referred to Figures 11 and 12 of Brace et al. '057 as showing an offset portion. With respect to Figure 11, edges

265a and 265b of bushing 206 were argued to correspond to an offset portion of a drill guide. With respect to Figure 12, drill tube 136 was argued to include an offset portion.

As was discussed with the Examiner during the telephone conference, independent Claims 1 and 29 generally recite that the distal end of the guide member and its corresponding offset projection (previously “portion”) are received together within a corresponding slot. Further, the offset projection contacts an end of the corresponding slot when positioned therein to space an adjacent edge of a hole formed through the drill guide away from that end of the slot.

As also discussed, edges 265a and 265b of Brace et al. ‘057 do not contact an *end* of a slot in which they are positioned. In fact, those edges face away from the end of the slot. Also, with respect to drill tube 136 in Figure 12, that drill tube is not received within a corresponding slot. In fact, as Figure 12 shows, the tip of drill tube 136 is larger than the corresponding opening. Thus, any portion thereof relied on as an offset projection could not be received within the slot so as to contact an end portion of the slot.

The Examiner acknowledged during the telephone discussion these differences and requested that Applicants amend the independent claims to even more clearly recite these differences as structural limitations. Such changes are presented herein.

The Examiner also tentatively acknowledged during the telephone conference that such amendments to the claims would likely overcome the application of Brace et al. ‘057, but that a further search would be required.

The citation to Oxland et al. was relied upon for teaching elliptically-shaped holes. This citation, however, does not compensate for the above-noted deficiencies of Brace et al. ‘057. Furthermore, Brace et al. ‘364 is acknowledged in the Office Action not

to suggest that bushings contact openings in a bone plate that are in the form of slots.

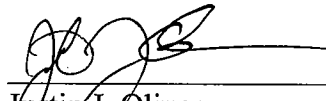
Thus, this patent also fails to remedy the deficiencies discussed above.

Conclusion

For the foregoing reasons, Applicants respectfully submit that the present invention is patentably defined by independent Claims 1 and 29. Dependent Claims 2-11 and 27 are also patentable by virtue of their dependencies on an allowable claim, as well as for the additional features they recite. Individual consideration of the dependent claims is requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,


Justin J. Oliver
Attorney for Applicants
Registration No. 44,986

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200
JJO/trl

FCBS_WS 2368756v1